

miner does not, or did not have pneumoconiosis, or that his or her respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(b) In the case of a deceased miner, where there is no medical or other relevant evidence, affidavits of persons having knowledge of the miner's condition shall be considered to be sufficient to establish the existence of a totally disabling respiratory or pulmonary impairment for purposes of this section.

(c) The determination of the existence of a totally disabling respiratory or pulmonary impairment, for purposes of applying the presumption described in this section, shall be made in accordance with § 718.204.

(d) Where the cause of death or total disability did not arise in whole or in part out of dust exposure in the miner's coal mine employment or the evidence establishes that the miner does not or did not have pneumoconiosis, the presumption will be considered rebutted. However, in no case shall the presumption be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

(e) This section is not applicable to any claim filed on or after January 1, 1982.

[45 FR 13678, Feb. 29, 1980, as amended at 48 FR 24288, May 31, 1983]

**§ 718.306 Presumption of entitlement applicable to certain death claims.**

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner who claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

(b) For the purpose of this section, a miner will be considered to have been

"partially disabled" if he or she had reduced ability to engage in work as defined in § 718.204(b).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform work as defined in § 718.204(b) was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) None of the following items, by itself, shall be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

[45 FR 13678, Feb. 29, 1980, as amended at 48 FR 24289, May 31, 1983]

**§ 718.307 Applicability of 33 U.S.C. 920(a).**

(a) Section 20(a) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 920(a), provides that in any claim for benefits under the Longshoremen's Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act. Section 422(a) of the Act incorporates such provision except as the Secretary provides by regulation.

(b) Where one or more of the presumptions contained in §§ 718.302-718.305 is or may be applicable to a claim, the provisions of section 20(a) of the Longshoremen's Act shall not apply to relieve a claimant from the burden of proving the facts necessary to give rise to the presumption, nor do the provisions of section 20(a) relieve a claimant of the burden of proving any element of the claim. See § 718.403.

**Subpart E—Miscellaneous Provisions**

**§ 718.401 Right to obtain evidence.**

Each miner who files a claim for benefits under the Act shall be provided an